

PUERTO NUEVO TERMINALS LLC

COOPERATIVE WORKING AGREEMENT

A Cooperative Working Agreement

## TABLE OF CONTENTS

ARTICLE 1.	Purpose of the Agreement	2
ARTICLE 2.	Parties to the Agreement	2
ARTICLE 3.	Geographic Scope of the Agreement	3
ARTICLE 4.	Overview of Agreement Authority	3
ARTICLE 5.	Performance of Terminal and Stevedoring Activities	7
ARTICLE 6.	Delegations of Authority	7
ARTICLE 7.	Effective Date, Term and Termination	8
ARTICLE 8.	Miscellaneous	8

**ARTICLE 1. Purpose of the Agreement.**

1.1 Luis Ayala Colon (LAC) and Puerto Rico Terminals (PRT), an affiliate of Tote Maritime, will form Puerto Nuevo Terminals (PNT), a Puerto Rico limited liability company, to operate a marine terminal and provide container stevedoring, terminal and related services in the Port of San Juan, Puerto Rico. The purpose of this agreement is to set forth the terms and conditions on which PNT shall operate, as well as agreements of the parties on services to be provided to and by PNT in the endeavor by and to the other parties to this Agreement.

**ARTICLE 2. Parties to the Agreement.**

2.1 The parties to this Agreement are as follows:

Luis Ayala Colon  
San Juan, PR

Puerto Rico Terminals  
Jacksonville, FL

Puerto Nuevo Terminals will be added as a party to this agreement upon its formation.

2.2 Additional parties may be added to this Agreement by unanimous vote of all current parties. Any new membership will be reflected in an amendment to this Agreement filed with the Federal Maritime Commission, and the membership of the new party shall not become effective unless and until said amendment becomes effective.

**ARTICLE 3. Geographic Scope of the Agreement.**

3.1 The geographic scope of the Agreement applies to the activities at or related to terminal facilities at the Port of San Juan, Puerto Rico.

**ARTICLE 4. Overview of Agreement Authority.**

4.1 LAC and PRT are authorized to agree on and implement the organization of PNT as a Puerto Rico limited liability company. PNT shall operate as a Marine Terminal Operator. PNT's organization and procedures are determined by PNT's formational documents, as agreed, amended and supplemented by the Parties. The PNT members are LAC and PRT.

4.2 PNT shall conduct container stevedoring, ro/ro stevedoring, terminal, container freight station and equipment maintenance and repair operations, and activities incidental thereto, at San Juan, Puerto Rico. The Parties may discuss, agree and take any actions in furtherance of or related PNT' stevedoring, terminal, container freight station and equipment and maintenance operations, and activities incidental thereto, including but not limited to the following:

- a. Hold permits and leases necessary to operate the terminal.
- b. Establish operating procedures for the terminal.
- c. Establish rates, charges and competitive practices.
- d. Publish marine terminal schedules.
- e. Publish marine terminal tariffs
- f. Negotiate and enter into agreements concerning marine terminal facilities and/or services, marine terminal conference agreements and/or agreements to provide stevedoring, maintenance and repair and other related services, subject to any applicable governmental filing requirements.

- g. Take measures necessary or appropriate to comply with the applicable governmental requirements, including with respect to terminal security.
- h. Either directly or through subcontractors, hire labor, including union labor, for its operations.
- i. Either directly or thorough subcontractors, own and/or lease and operate cranes, lift machines, trucks and other equipment and gear incident to PNT's purposes.
- j. Either directly or through subcontractors, operate, pursuant to lease, sublease, assignment, subassigment, purchase or acquisition, terminal facilities and operations connected with such facilities at the Port of San Juan, Puerto Rico.
- k. Enter into agreements in its own name to obtain services and materials required for such operations. Such services and materials may include:
  - i. Payroll, coordination of external audits, billing, and accounts payable;
  - ii. Tax services, such as the preparation and filing of, and assistance with respect to, tax returns and reports to the Internal Revenue Service;
  - iii. Legal services;
  - iv. Insurance services, including assistance in designing, obtaining and negotiating insurance policies;
  - v. Property management services, including the administration of leasehold and/or ownership interests in land and equipment;
  - vi. Human resources services;
  - vii. Services related to public affairs, including contacts with news and trade publications media and including crises management;

- viii. Marketing, advertising, and public relations services, such as developing a customer service program, and/or pursuing third party opportunities;
  - ix. General services with respect to government relations;
  - x. Terminal design services, including mechanical/electrical and industrial engineering;
  - xi. Vessel planning services; and
  - xii. Other professional services.
- l. Engage in such other activities as are customary for a marine terminal and/or stevedoring operation.
- m. Preserve, maintain, and distribute PNT funds in accordance with its formational documents.
- n. Execute any and all agreements, documents, certificates, and instruments necessary or convenient in connection with the management and operation of the terminal or in connection with the business of PNT.
- o. Manage its legal, accounting, and tax affairs.
- p. Perform all functions necessary to operate a Puerto Rico limited liability company, including but not limited to maintenance of company books and records, preparation of financial statements, filing of tax returns and other tax information as required, establishment of bank accounts and investments, maintenance of offices and hiring and management of personnel, indemnification of managers and officers, and maintenance of insurance.

4.3 The Parties are authorized to consult, exchange information, discuss, and make and implement agreements regarding the subjects of this Article 4. Such agreements may include, *inter alia*:

- a. Agreement for LAC to provide for the benefit of PNT union labor on terms that provide that PNT will not contract with any third party, other than LAC, to provide union labor for PNT's operations; provided, however, that nothing contained in this Agreement shall preclude PNT from directly contracting for its own labor.
- b. Agreement for LAC to lease to PNT stevedoring and terminal equipment necessary for PNT's operations.
- c. Agreement for PRT to lease to PNT stevedoring and terminal equipment necessary for PNT's operations.
- d. Agreement for LAC to lease to PNT port property necessary for PNT's operations.
- e. Agreement for PRT to lease to PNT port property necessary for PNT's operations.
- f. Agreement for LAC to provide to PNT terminal operating system software and/or accompanying information technology support services, or other back office support as required by PNT.
- g. Agreement for PRT to provide to PNT financial system software and/or accompanying information technology support services, or other back office support as required by PNT.

**ARTICLE 5. Performance of Terminal and Stevedoring Activities.**

5.1 The Parties agree that during the term of existences of PNT, Tote and its affiliates will utilize PNT to provide all stevedoring and terminal services required by Tote and its affiliates at the Port of San Juan.

5.2 The Parties agree that LAC will assign all current stevedoring and customer contracts at the Port of San Juan to PNT.

5.3 The Parties agree that PRT will assign all current stevedoring and customer contracts to PNT.

**ARTICLE 6. Delegations of Authority.**

6.1 The following persons shall have authority on behalf of a Party to sign and file this Agreement, any subsequent modifications thereto, and any supporting information with the Federal Maritime Commission (FMC) or any other governmental entities with jurisdiction over this Agreement and to respond to any requests for information from the FMC, and such persons are also authorized to delegate such authority:

- a. A designated senior executive of each Party; or
- b. Legal counsel for each Party or for the Agreement.

6.2 This Agreement and any subsequent modifications hereto may be executed in writing by separate counterparts, each of which shall be deemed an original, and all of which together shall constitute a single instrument.



**ARTICLE 7. Effective Date, Term and Termination.**

7.1 The Agreement shall become effective on the date it becomes effective under 46 U.S.C. 40304.

7.2 The Agreement shall continue in effect indefinitely unless otherwise terminated by agreement by all Parties, or an event occurs which gives rise to a termination event under PNT's formational documents.

**ARTICLE 8. Miscellaneous.**

8.1 Assignment. The Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns, but neither the Agreement nor any of the rights, interests, or obligations hereunder shall be assigned by any of the Parties hereto without the prior written consent of the other Parties.

8.2 Governing Law. The Agreement, the construction of its terms, and the interpretation of the rights and duties arising hereunder shall be governed by the Shipping Act of 1984 and the laws of the Puerto Rico.

8.3 Disputes. Any dispute arising out of this Agreement shall be settled by arbitration in accordance with the commercial rules of the American Arbitration Association as then in effect.

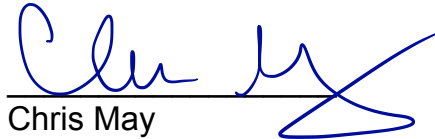
8.4 Amendments. The provisions of this Agreement may not be waived, amended, or repealed, in whole or in part, by any of the Parties hereto, except with the written consent of each of the Parties hereto.

## **SIGNATURE PAGE**

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their authorized representatives as of this 27<sup>th</sup> day of 2019.



Herman F. Ayala-Rubio  
Executive Vice President  
Luis Ayala Colon  
San Juan, PR



Chris May  
Vice President  
Puerto Rico Terminals  
Jacksonville, FL

l" = "l" "152879.06501/116835873v.2" "" 152879.06501/116835873v.2